1947. K **File No.** O. Rationing 47

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Bombay Rationing Order 1943

File No. O. Rationing/47.

Std. Sectt. Slip 24 D

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"To determine that a case is within the intention of a Statute, its language must authorise the Court to say so, but it is not admissible to carry the principle that a case which is within the purview of a statute is within its provisions so far as to punish a crime not specified in the statute, because it is of equal atrocity of a kindred character with those which are enumerated" (see Maxwell, page 251). Under Notification No. C.R. 68, dated 25th March 1943 rationed articles include among other things sugar candy, crystal, crushed, bura or lisca sugar. Sugar-Sweepings, being not one of articles mentioned therein, cannot be considered a rationed article.

Id/-

Remembrancer of Legal Affairs.

U.O.P. to C.S.D.No. 789

Dated the 20-th January 1947.

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The note of the Controller of Rationing dated 30-1-1947 (pages 5-6) :-

Para. 2 :- It appears that the Surat Rationing Regulation, 1944 was made under clause 12 of the Bombay Rationing Order, 1943 which was made under rule 81 of the Defence of India ~~xx~~ Rules. Although the Defence of India Rules have expired, the Bombay Rationing Order, 1943 continues in force under section 17(2) of the Essential Supplies (Temporary Powers) Act, 1946, read with section 6 of the Essential Supplies (Temporary Powers) Ordinance 1946 (XVIII of 1946). It was, therefore, lawful for the Dist Magistrate, Surat, to issue the direction as is contained in his Notification No. R.T.N., dated 19th December 1946 at p. 1 ante to the Authorised Retail Distributor. Whether on grounds of expediency and in view of the fact that such notifications have not been issued elsewhere the direction should be continued is a question of policy for the Department to decide.

Para. 3. :- The directions contemplated under sub-clause (2) of clause 39 of the Surat Rationing Regulation, 1944, are executive directions and have to relate to the provisions of sub-clause (1) thereof. They may be in the form of a circular or letter which need not be published in the B.G.G.

Para. 4 :- The view expressed in this para. is in ~~xxx~~ accordance with the view expressed by the E.L.A. in his opinion No. 7543, dated 1/11/1946. It is for the administrative Department to decide whether a Press Note or a circular should be issued for the information of the persons concerned.

Sd/- P.M.L
1946

Remembrancer of Legal Affairs.

U.R. to the Controller of Rationing, No. 6185,
dated the 14th June 1947.

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Office of the R.L.A.

In his note dated the 27th January, 1948, the Assistant Controller of Rationing states as follows:

> "The District Magistrate, Dharwar is of the opinion that unreasonable shortages or excesses do not constitute an offence under Rationing Regulations, the Food Grains Control Order and Licensing Order referred to in the agreement executed by the Authorised Retail Distributors with him and as such the deposit of ~~xxxx~~ A.R.Ds. cannot be forfeited on account of the said irregularities. He has therefore suggested that the agreement should be amended so as to cover such irregularities. The A.R.Ds. have to maintain accounts in the manner prescribed by R.C. by issuing directions under clause 33 of the Small Town R Rationing Regulations. These directions do not however state that the A.R.Ds. should maintain true and correct a counts. But if such a provision is made I think it would cover cases of shortages and excesses. The A.R.D. must account for all the stocks received by them from Government Godowns and any variation between book balance and physical balance can be considered to be due to the accounts not being maintained correctly. If this view is correct deposit can be forfeited on account of an unreasonable shortages or excesses which would amount to an offence in that direction about keeping true and correct accounts would be contravened."

The questions raised for the consideration of the R.L.A. are

(1) Whether the deposit of A.R.D. in rationed areas in mofussil can be forfeited for unreasonable shortage or excesses in stocks of rationed articles and

(2) if not, whether there is any objection to amending the form of agreement providing for the forfeiture of deposit in such cases.

Under clause 33 of the Model Rationing Regulation for Small Towns, the Rationing or any officer authorised by him can issue a direction to every authorised Retail Distributor regarding the distribution and accounting of rationed articles; but it is doubtful whether "accounting" would mean correct accounting. It does not however appear essential to resort to clause 33. Under clause 4 an authorised retail distributor when it is necessary to do so obtain a license or authorisation under the Food-grains Control Order, 1943, and observe the conditions thereof. Under clause 5 of the undertaking from an Authorised Retail Distributor at page 5 ante, the authorised retail distributor agrees to the forfeiture of his deposit for the contravention of any of the provisions of or the directions issued from time to time under the Bombay Rationing Order, the Food Grains Control Order 1948, the Bombay Retail Trade Control and Licensing Order,

1942, etc. Since an authorised retail distributor engages in an undertaking presumably involving purchase and storage for sale in wholesale quantities that is to say in quantities exceeding twenty maunds he is required to take a license under clause 3, of the Foodgrains Control Order. Clause 4 provides that licenses issued under this Order shall be in Form A and shall specify —

(a) the foodgrain or foodgrains in which the licensee may deal;

(b) the place or places at which the licensee may carry on the business.

Under cause 6, no person being the holder of a license issued or deemed to be issued under this Order shall contravene any of the conditions mentioned in Form A etc.

Condition 3 of the conditions in Form A required the licensee to maintain a register of daily accounts for each of the food grains mentioned in paragraph 1 showing correctly —

(a) the opening stock on each day;

(b) the quantities received on each day showing the place of origin;

(c) the quantities delivered or otherwise removed on each day showing the place of destination etc.;

(d) the closing stock on each day.

It is apparent that an authorised retail distributor is required to maintain a true and correct account of the food grains which include rationed food stuffs; and if there is any material variation between the book balance and physical balance, he cannot be said to have maintained a true and correct account in which case there would clearly be a contravention of the Foodgrains Control Order. Consequently it appears that there would be no legal objection to forfeiting the deposit of an authorised retail distributor for unreasonable shortages or excesses. If A.C.P. still feels any doubt on this point, he may make a further reference to R.L.A.

In view of the reply to the first question, the second question does not survive.

I d/-

W.R.W.C. O.R. No. 6599, dated the 11th I. Remembrancer of Legal Affairs.

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